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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/734,755	12/12/2000	Robert B. Schock	DATA_53	4827

7590

12/18/2002

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EXAMINER

PATEL, NIHIR B

ART UNIT

PAPER NUMBER

3743

DATE MAILED: 12/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/734,755

Applicant(s)

SCHOCK ET AL.

Examiner

Nihir Patel

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 5-19 is/are pending in the application.
- 4a) Of the above claim(s) 20-30 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18 and 19 is/are allowed.
- 6) ☒ Claim(s) 1, 5, 7/1, 16, and 17 is/are rejected.
- 7) ☒ Claim(s) 6, 7/6, and 8-15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Amendment***

1. Newly submitted claims 20-30 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1, 5-19, drawn to intra-aortic balloon catheter having a fiberoptic sensor, classified in class 600, subclass 486.
- II. Claims 20-30, drawn to method for operating, classified in class 604, subclass 505.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 20-30 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1, 5-13, and 17-19 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5, 7/1, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over combined teachings of Eggers et al. U.S. Patent No. 5,928,155 and Schock et al. U.S. Patent No. 6,024,693.

Referring to claims 1, 5, 7/1, 16, and 17, Eggers discloses applicant's invention as claimed with the exception of providing a distal end of the balloon membrane that is connected to the tip and to a distal end of the inner tube.

Schock discloses an intra-aortic balloon catheter that does provide a distal end of the balloon membrane that is connected to the tip and to a distal end of the inner tube (see figures 2 and 3). Therefore it would be obvious to modify Edgger's invention by providing a distal end of the balloon membrane that is connected to the tip and to a distal end of the inner tube in order to reduce the size of the catheter so that it can be applied to hard to reach areas.

***Allowable Subject Matter***

4. Claims 6, 7/6, and 8-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 18 and 19 are allowed.

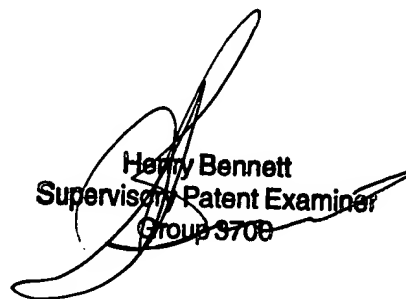
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***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Nihir Patel whose telephone number is (703) 306-3463. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:30 pm. If attempts to reach the examiner by telephone are unsuccessful the examiner supervisor Henry Bennett can be reached at (703) 308-0101.

NP  
December 10, 2002

  
Henry Bennett  
Supervisor Patent Examiner  
Group 3700